

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTA MARQUEZ and DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS, New York, N.Y.

*Docket No. 98-98; Submitted on the Record;
Issued July 1, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

In the present case, the Office accepted that on January 13, 1996 appellant, then a 44-year-old field representative who worked an intermittent schedule, sustained employment-related multiple contusions when she fell down stairs for which she received appropriate continuation of pay and compensation. By letter dated November 7, 1996, the Office informed appellant that it proposed to terminate her compensation based on the opinion of Dr. John Mazella, a Board-certified orthopedic surgeon who provided a second-opinion evaluation for the Office. Again relying on the opinion of Dr. Mazella, by decision dated December 10, 1996, the Office terminated appellant's benefits, effective that day, on the grounds that the medical evidence established that she no longer required medical treatment as a result of the January 13, 1996 employment injury. Appellant timely requested reconsideration, and by decision dated August 8, 1997, the Office reviewed the medical evidence of record and declined to modify the prior decision.

The relevant medical evidence of record includes a January 14, 1996 report in which Dr. Martin Valdes¹ diagnosed low back, left elbow and neck pain with no head trauma. In reports dated January 18 and 23, 1996, Dr. Harold Milstein, a Board-certified internist, diagnosed diffuse bruises with muscle sprains due to the employment injury. He continued to submit reports, and, by report dated July 10, 1996, stated that appellant could not work eight hours per day and provided restrictions to her physical activity.

Dr. Mazella submitted a preliminary report dated July 10, 1996 in which advised that there was a mild, partial disability and that appellant was capable of working with restrictions at a sedentary job not requiring lifting greater than 10 pounds. A July 17, 1996 magnetic resonance

¹ Dr. Valdes' credentials are not known.

imaging (MRI) of the thoracic spine demonstrated no fracture. MRI of the right shoulder that same date was negative for rotator cuff tear. In an August 5, 1996 report, Dr. Mazella reviewed the MRI findings and stated:

“Based upon these diagnostic studies and my prior physical examination of [appellant] I can find no objective orthopedic findings to substantiate [her] subjective complaints. Therefore, from an orthopedic perspective, there are no contraindications to [her] returning to work without restrictions. Furthermore, I find no objective orthopedic findings which warrant further formal treatment.

In a September 25, 1996 report, Dr. Emmanuel Lambrakis, a general surgeon, stated that none of the physicians who treated appellant following the January 13, 1996 injury “[had] the expertise to treat this type of injury,” advised that appellant suffered “significant concussive symptoms,” diagnosed herniated discs at C3-4 and C4-5, and noted findings on examination. In form reports dated September 24 and October 22, 1996, he diagnosed severe cervical radiculopathy secondary to herniated discs at C3-4 and C4-5 and sternoclavicular joint derangement, and checked the “yes” box, indicating that these diagnoses were employment related. Dr. Lambrakis advised that she was totally disabled. In a November 14, 1996 report, Dr. Lambrakis reiterated his diagnoses and disagreed with Dr. Mazella’s opinion, noting that, Dr. Mazella did not request MRIs of the cervical and lumbosacral spine, and had noted positive findings on examination of appellant’s sternoclavicular joint.

Following her request for reconsideration, appellant submitted additional medical evidence that included additional form reports from Dr. Lambrakis in which he continued to advise that appellant’s condition was employment related. On January 9, 1997 he submitted a July 2, 1996 MRI of the cervical spine that demonstrated a small central disc protrusion at C3-4 and mild degenerative disc disease at C4-5. MRI of the lumbar spine on September 30, 1996 revealed a small central protrusion at L4-5 with no evidence of root impairment or significant stenosis. Dr. Lambrakis also submitted a work capacity evaluation dated January 7, 1997 in which he indicated that appellant could not work. In an April 11, 1997 report, Dr. Lambrakis reiterated his diagnoses, stating that these explained her neurological deficit in the upper extremities. He noted findings on examination of the lumbar spine and sternoclavicular joint and stated that recent MRI indicated severe joint hypertrophy. He also stated that electromyography (EMG) had been completed and concluded that she was developing a permanent condition related to the January 13, 1996 employment injury.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.²

Section 8123 of the Federal Employees’ Compensation Act provides that if there is disagreement between the physician making the examination for the United States and the

² See Patricia A. Keller, 45 ECAB 278 (1993).

physician of the employee, the Secretary shall appoint a third physician who shall make an examination.³

In the present case, appellant's treating physician, Dr. Lambrakis advised that appellant suffered "significant concussive symptoms," diagnosed herniated discs at C3-4 and C4-5, noted findings on examination, advised that she was totally disabled, and was consistent in his opinion that her condition was employment related. The Office referral physician, Dr. Mazella, however, offered a second opinion that appellant could return to work without restriction and required no further treatment. The Board finds that the reports of Drs. Lambrakis and Mazella are of approximately equal value, and are in conflict on the issue of whether appellant's employment-related disability had ceased. Therefore the Office has not met its burden of proof.

The decisions of the Office of Workers' Compensation Programs dated August 8, 1997 and December 10, 1996 are hereby reversed.

Dated, Washington, D.C.
July 1, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ 5 U.S.C. § 8123; *see Shirley L. Steib*, 46 ECAB 309 (1994).